

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	Shoff et al)
)
Serial No.:	09/736,532) Appeal No.
Confirmation No.	8374)
Filed:	December 11, 2000)
For:	Interactive Entertainment System for Presenting Supplemental Interactive Content Together with Continuous Video Programs)
Examiner:	Salce, Jason P.)

The Honorable Commissioner of Patents
Mail Stop Appeal Brief - Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

BRIEF OF APPELLANT

The Applicant has filed a timely Notice of Appeal from the action of the Examiner in finally rejecting all of the claims that were considered in this application. This Brief is being filed under the provisions of 37 C.F.R. § 1.192. The Filing Fee, as set forth in 37 C.F.R. § 1.17(c), is submitted herewith.

TABLE OF CONTENTS

Real Party in Interest	Page 3
Related Appeals and Interferences	Page 4
Status of Claims	Page 5
Status of Amendments	Page 6
Summary of Invention	Page 7
Grounds of Rejection	Page 10
Argument	Page 11
Claims Appendix	Page 18
Evidence Appendix	Page 19
Related Proceedings Appendix	Page 20

REAL PARTY IN INTEREST

The real party in interest is Microsoft Corporation, by way of assignment from Shoff et al., who is the named inventive entity and is captioned in the present brief.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 60 and 61 are pending in the application and stand finally rejected by the Examiner.

STATUS OF AMENDMENTS

None.

SUMMARY OF INVENTION

Beginning at page 13 of the subject application, an exemplary entertainment system is described. The interactive entertainment system according to the described implementation accommodates third party independent service providers. Interactive entertainment system 60, for instance, includes headend 22 which supplies programs and supplemental content to a viewer computing unit 62 as shown in FIG. 4, which is excerpted as follows for the sake of convenience:

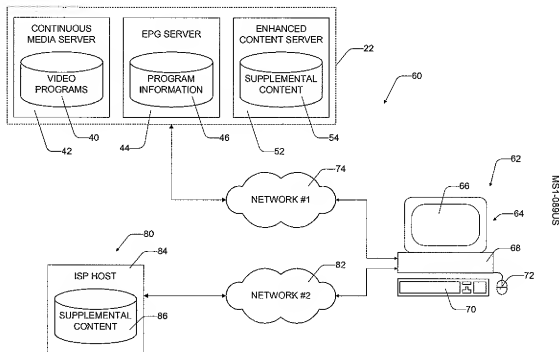


Fig. 4

The headend 22 serves the programs over a first network 74, which may be implemented as a fiber optic distribution structure, or as a satellite system or other wireless broadcast system, or as a conventional data network. It is noted that other program providers

may be used instead of a headend, such as a broadcast station or an online service provider.

The interactive entertainment system 60 also includes multiple independent service providers (ISPs), as represented by ISP 80, which distribute digital content to the viewer computing unit 62 over a second network 82. An example of the second network 82 is a public network, such as the Internet. The ISP 80 has a host 84 and a content database 86 to serve various multimedia content to the viewer's computer. The ISP host 84 stores one or more target resources that can be rendered by the viewer computing unit 62.

According to this Fig. 4 arrangement, the viewer computing unit 62 receives a non-interactive, continuous video stream from the headend 22, and may receive supplemental interactive content from either the headend 22 or from an independent service provider 80. The supplemental content might therefore be carried to the viewer's computer over separate channels or over a separate connection unrelated to the program channels. For example, a back channel for facilitating interactive control is provided through either network 72 or 82.

Independent Claim 61 recites a method for enhancing a continuous video content program (e.g., page 13, line 9 and video program 40 of FIG. 4) with supplemental hyperlink content (e.g., page 13, line 10 and supplemental content 86 of FIG. 4) to provide viewer interactivity with the video content program, comprising the following steps: configuring digital data which defines a display layout prescribing how the supplemental hyperlink content and the video content program are to appear in relation to one another when displayed (e.g., page 12, lines 12-15); transmitting the digital data along with the video

content program as two separate signals from two separate sources (e.g., page 13, line 7 to page 13, line 19; and networks 74 and 82 of FIG. 4); and displaying the supplemental hyperlink content (e.g., page 13, line 10 and supplemental content 86 of FIG. 4) and the video content program (e.g., page 13, line 9 and video program 40 of FIG. 4) according to the display layout.

GROUND OF REJECTION

1. Whether Claim 60 under 35 U.S.C. §102(e) was properly rejected as being unpatentable over U.S. Patent No. 5,848,352 to Dougherty et al. (hereinafter "Dougherty").
2. Whether Claim 61 was properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Dougherty in view of U.S. Patent No. 5,818,441 to Throckmorton et al. (hereinafter "Throckmorton").

ARGUMENT

First Ground of Rejection.

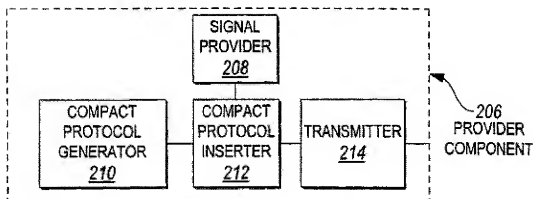
Claim 60 satisfies the requirements of 35 U.S.C. § 102(e) and therefore is not anticipated by Dougherty.

Claim 60 recites a method for enhancing a continuous video content program with supplemental hyperlink content to provide viewer interactivity with the video content program, comprising the following steps:

- configuring digital data which defines a display layout prescribing how the supplemental hyperlink content and the video content program are to appear in relation to one another when displayed;
- transmitting the digital data along with the video content program as two separate signals from two separate sources; and
- displaying the supplemental hyperlink content and the video content program according to the display layout.

Dougherty does not disclose these aspects.

The Office, in the *Response to Arguments* Section of the Office Action, asserts “Figure 2A, for the video being transmitted from signal provider 208 and the digital data being transmitted from the compact protocol generator 210”. See *Office Action Dated July 13, 2005, Pages 3-4*. This is not the case, as shown in FIG. 2A, an output of the signal provider 208 and the compact protocol generator 210 is provided to a compact protocol inserter 212, an output of which is provided to a transmitter 214. Figure 2A of Dougherty is excerpted for the sake of convenience as follows:



Thus, the transmitter 214 of Dougherty provides a single signal. Accordingly, "transmitting the digital data along with the video content program as two separate signals from two separate sources" as recited in Claim 60 is not disclosed by the asserted figure.

Further, Dougherty even teaches that the use of separate signals is undesirable and thus clearly cannot be asserted to disclose the above recited features, as discussed in the following excerpted portion:

One inherent problem is the reluctance of many users to significantly invest in separate reception or display equipment required to display and operate a graphical interactive information system. For example, many potential users of a graphical interactive television system will not pay the cost of receiving the graphical interactive information over an FM channel because of the cost of the additional tuner equipment required by such an approach. Conventional set top cable television decoder boxes can provide a desirable reception platform for interactive television systems because they are relatively cheap, contain much of the necessary interface and reception equipment, and are accepted in most homes. However, the use of such devices would be acceptable if only inexpensive, compact modifications were required to display and operate a graphical interactive information system. *Dougherty, Col. 2, Lines 37-52.*

Therefore, Dougherty cannot be said to disclose transmission of separate signals from separate sources.

The Examiner also asserts the following in the Advisory action:

Applicant argues that Dougherty teaches away from the user of separate signals by citing Colum 2, Lines 37-52 of Dougherty. The examiner notes that this passage of Dougherty teaches separate reception of a graphical user interface, while the claim limitations discuss transmission. The examiner is reading the transmission of the digital data along with the video content program as two separate signals as the VBI signal used to transmit the digital data and the higher bandwidth signals carrying the video content programs. Also not that Dougherty clearly teaches two separate sources, where the signal provider 208 is a first source and the compact protocol generator 210 is the second source. *See Advisory Action, Page 2.*

It is again respectfully submitted that the Examiner's assertion is in error.

It is respectfully submitted that the Examiner's assertion of separate signals as a VBI signal and a video content program signal is clearly erroneous. A vertical blanking interval is an interval between active fields in a single television signal. For example, Wikipedia defines the vertical blanking interval as follows:

The vertical blanking interval (VBI) or vertical interval for short is an interval in a television or VDU signal that temporarily suspends transmission of the signal for the electron gun to move back up to the first line of the television screen to trace the next screen field.

The VBI is necessary mostly because of the inductive inertia of the magnetic coils which deflect the electron beam vertically: the magnetic field cannot change instantly. For horizontal deflection,

there is also a gap between successive lines, to allow the beam to return from right to left, called the horizontal retrace.

The vertical blanking interval can be used to carry data, since anything sent during the VBI would naturally not be displayed; various test signals, time code, closed captioning, teletext, CGMS-A copy-protection indicators, and various data encoded by the XDS protocol (eg. the content ratings for V-chip use) and other digital data can be sent during this time period. The Macrovision copy protection scheme uses pulses in the VBI on videotapes to disrupt recording. *See Vertical Blanking Interval*, <http://en.wikipedia.org/wiki/VBI>.

Thus, the VBI is an interval in a single signal that may be used to carry data between frames having the visual data. Claim 60, however, recites “transmitting the digital data along with the video content program as two separate signals”. Again, looking at FIG. 2A from Dougherty, it is clear that a single transmission is accomplished in Dougherty, which is also supported by the Examiner’s assertion of separate signals which is contrary to what is shown in FIG. 2A as a single signal from a single source, e.g., the transmitter 214.

Therefore, the Applicant respectfully requests the Board to overturn the First Ground of Rejection.

Second Ground of Rejection. Claim 61 satisfies the requirements of 35 U.S.C. § 103(a) and therefore is not made obvious over Dougherty in view of Throckmorton.

Claim 61 is dependent claim that depends from Claim 60 and therefore is allowable for each of the reasons previously recited in the First Ground of Rejection. Therefore, these assertions will not be repeated again for the sake of brevity. This claim is also allowable for its own recited features which, in combination with those recited in claim 60, are neither shown nor suggested in the references of record, either singly or in combination with one another. Claim 61 recites in part “wherein the transmitting step comprises the following steps”:

- transmitting the digital data as a first signal from a first source; and
- transmitting the video content program as a second signal from a second source that is different than the first source.

Dougherty is not modifiable, either by Throckmorton or any other submitted reference, because such a modification would run contrary to the expressed teachings of Dougherty. Dougherty, as previously described and acknowledged by the Office, separate reception of signals is not desirable. Accordingly, separate transmission of signals as recited in Claim 61 would also be undesirable. Further this assertions is supported by the Examiner’s assertion of a VBI and FIG. 2A, which clearly shows transmission from a single source, e.g., the transmitter 214. Therefore, Dougherty may not be modified as proposed by the Examiner. As is well settled, “A prior art reference

must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” *M.P.E.P. 2141.02, citing W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Therefore, claim 61 is allowable over the submitted references and the Applicant respectfully requests the Board to overturn the Second Group of Rejection.

CONCLUSION

The Applicant respectfully considers this application to be in condition for allowance and respectfully request the Board to overturn the final rejection and that the Examiner pass this application to allowance.

Dated this 12th day of January, 2006.

Respectfully submitted,



WILLIAM J. BREEN, III
Attorney for Applicant
Registration No. 45,313

LEE & HAYES PLLC
421 W. Riverside Avenue, Suite 500
Spokane, WA 99201
Telephone: (509) 324-9256 (Ext. 249)
Facsimile: (509) 323-8979

APPENDIX: CLAIMS ON APPEAL

Listing of Claims:

Claims 1-59 (cancelled).

60. (previously presented): A method for enhancing a continuous video content program with supplemental hyperlink content to provide viewer interactivity with the video content program, comprising the following steps:

configuring digital data which defines a display layout prescribing how the supplemental hyperlink content and the video content program are to appear in relation to one another when displayed;

transmitting the digital data along with the video content program as two separate signals from two separate sources; and

displaying the supplemental hyperlink content and the video content program according to the display layout.

61. (previously presented): A method as recited in claim 60, wherein the transmitting step comprises the following steps:

transmitting the digital data as a first signal from a first source; and

transmitting the video content program as a second signal from a second source that is different than the first source.

Claims 62-29 (cancelled).

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.